



**4310-EJ**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 13**

**[NPS-AKRO- 18755; PPAKAKROZ5, PPMRLE1Y.L00000]**

**RIN 1024-AE21**

**Alaska; Hunting and Trapping in National Preserves.**

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service is amending its regulations for sport hunting and trapping in national preserves in Alaska. This rule provides that the National Park Service does not adopt State of Alaska management actions or laws or regulations that authorize taking of wildlife, which are related to predator reduction efforts (as defined in this rule). This rule affirms current State prohibitions on harvest practices by adopting them as federal regulation. The rule also prohibits the following activities that are allowed under State law: taking any black bear, including cubs and sows with cubs, with artificial light at den sites; taking brown bears and black bears over bait; taking wolves and coyotes during the denning season; harvest of swimming caribou or taking caribou from a motorboat while under power; and using dogs to hunt black bears. The rule also simplifies and updates procedures for closing an area or restricting an activity in National Park Service areas in Alaska; updates obsolete subsistence regulations; prohibits obstructing persons engaged in lawful hunting or trapping; and authorizes the use of

native species as bait for fishing.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5<sup>th</sup> Ave., Anchorage, AK 99501. Phone (907) 644-3417. Email: AKR\_Regulations@nps.gov

**SUPPLEMENTARY INFORMATION:**

**Background**

*Proposed Rule and Public Comment Period.*

On September 4, 2014, the National Park Service (NPS) published the proposed rule in the Federal Register (79 FR 52595). The rule was open for public comment for 90 days, until December 3, 2014. The NPS reopened the comment period from January 15, 2015 through February 15, 2015 (80 FR 2065). The NPS invited comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>.

During the first comment period in 2014, the NPS held 17 public hearings in various locations in Alaska. Approximately 168 individuals attended these hearings and approximately 120 participants provided testimony during the formal public comment sessions. During the second comment period, nine public meetings were held in the State. A total of 29 individuals attended the public meetings, and a total of nine attendees spoke during the formal public comment sessions. The NPS also held two statewide government-to-government consultation teleconferences, and offered to consult in person, with tribes. Four comments were received during the statewide government-to-government consultation conference calls and the NPS met

with three tribes that requested consultation in person (Allakaket, Tazlina, and Chesh'na (Chistochina)).

The NPS received approximately 70,000 comments on the proposed rule during the public comment period. These included unique comment letters, form letters, and signed petitions. Approximately 65,000 comments were form letters. The NPS also received three petitions with a combined total of approximately 75,000 signatures. Some commenters sent comments by multiple methods. NPS attempted to match such duplicates and count them as one comment. Additionally, many comments were signed by more than one person. NPS counted a letter or petition as a single comment, regardless of the number of signatories.

A summary of comments and NPS responses is provided below in the section entitled “Summary of and Responses to Public Comments.” After considering the public comments and additional review, the NPS made some changes in the final rule from that proposed. These changes are summarized below in the section entitled “Changes from the Proposed Rule.”

*Federal and State Mandates for Managing Wildlife.*

In enacting the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-410hh-5; 3101-3233) in 1980, Congress's stated purpose was to establish in Alaska various conservation system units that contain nationally significant values, including units of the National Park System, in order to preserve them “for the benefit, use, education, and inspiration of present and future generations[.]” 16 U.S.C. 3101(a). Included among the express purposes in ANILCA are preservation of wildlife, wilderness values, and natural undisturbed, unaltered ecosystems while allowing for recreational opportunities, including sport hunting. 16 U.S.C. 3101(a)-(b).

The legislative history of ANILCA reinforces the purpose of the National Park System units to maintain natural, undisturbed ecosystems. “Certain units have been selected because they provide undisturbed natural laboratories—among them the Noatak, Charley, and Bremner River watersheds.” Alaska National Interest Lands, Report of the Senate Committee on Energy and Natural Resources, Report No. 96-413 at page 137 [hereafter Senate Report]. Legislative history identifies Gates of the Arctic, Denali, Katmai, and Glacier Bay National Parks as “large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.” Senate Report, at page 137.

The congressional designation of “national preserves” in Alaska was for the specific and sole purpose of allowing sport hunting and commercial trapping, unlike areas designated as national parks. 126 CONG. REC. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). 16 U.S.C. 3201 directs that national preserves shall be managed “in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve[.]” Under ANILCA and as used in this document, the term “subsistence” refers to subsistence activities by rural Alaska residents authorized by Title VIII of ANILCA, which ANILCA identifies as the priority consumptive use of fish and wildlife on public lands. 16 U.S.C. 3144. Subsistence taking of fish and wildlife in NPS areas is generally regulated by the Department of the Interior. Taking wildlife for sport purposes in national preserves is generally regulated by the State of Alaska.

In addressing wildlife harvest, the legislative history provided “the Secretary shall manage National Park System units in Alaska to assure the optimum functioning of entire ecological systems in undisturbed natural habitats. The standard to be met in regulating the

taking of fish and wildlife and trapping, is that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses.” 126 CONG. REC. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). This is reflected in the statutory purposes of various national preserves that were established by ANILCA, which include the protection of populations of fish and wildlife, including specific references to predators such as brown/grizzly bears and wolves.

Activities related to taking wildlife remain subject to other federal laws, including the mandate of the NPS Organic Act (54 U.S.C. 100101) “to conserve the scenery, natural and historic objects, and wild life” in units of the National Park System and to provide for visitor enjoyment of the same for this and future generations. Policies implementing the NPS Organic Act require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2. The legislative history of ANILCA reflects that Congress did not intend to modify the NPS Organic Act or its implementing policies in this respect: “the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population’s dynamics, and manipulations of the components of the ecosystem.” Senate Report, at pages 232-331. NPS policy states that “activities to reduce. . . native species for the purpose of increasing numbers of harvested species (i.e. predator control)” are not allowed on lands managed by the NPS. NPS Management Policies 2006 § 4.4.3.

The State’s legal framework for managing wildlife in Alaska is based on sustained yield, which is defined by State statute to mean “the achievement and maintenance in perpetuity of the

ability to support a high level of human harvest of game[.]” AS §16.05.255(k)(5). To that end, the Alaska Board of Game (BOG) is directed to “adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals[.]” AS §16.05.255(e). Allowances that manipulate natural systems and processes to achieve these goals, including actions to reduce or increase wildlife populations for harvest, conflict with laws and policies applicable to NPS areas that require preserving natural wildlife populations. See, e.g., NPS Management Policies 2006 §§ 4.1, 4.4.3.

This potential for conflict was recognized by the Senate Committee on Energy and Natural Resources prior to the passage of ANILCA, when the Committee stated that “[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.” Senate Report, at page 171.

In the last several years, the State of Alaska has allowed an increasing number of liberalized methods of hunting and trapping wildlife and extended seasons to increase opportunities to harvest predator species. Predator harvest practices recently authorized on lands in the State, including lands in several national preserves, include:

- taking any black bear, including cubs and sows with cubs, with artificial light at den sites;
- harvesting brown bears over bait (which often includes dog food, bacon/meat grease, donuts, and other human food sources); and

- taking wolves and coyotes (including pups) during the denning season when their pelts have little trophy, economic, or subsistence value.

These practices are not consistent with the NPS's implementation of ANILCA's authorization of sport hunting and trapping in national preserves. To the extent such practices are intended or reasonably likely to manipulate wildlife populations for harvest purposes or alter natural wildlife behaviors, they are not consistent with NPS management policies implementing the NPS Organic Act or the sections of ANILCA that established the national preserves in Alaska. Additional liberalizations by the State that are inconsistent with NPS management directives, policies, and federal law are anticipated in the future.

16 U.S.C. 3201 of ANILCA provides "within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment." In order to comply with federal law and NPS policy, the NPS has adopted temporary restrictions under 36 CFR 13.40(e) to prevent the application of the above listed predator harvest practices to national preserves in Alaska (see, e.g., 2013 Superintendent's Compendium for Denali National Park and Preserve). These restrictions protect fauna and provide for public use and enjoyment consistent with ANILCA. While the NPS prefers a State solution to these conflicts, the State has been mostly unwilling to accommodate the different management directives for NPS areas. In the last ten years, the NPS has objected to more than fifty proposals to liberalize predator harvest in areas that included national preserves, and each time the BOG has been unwilling to exclude national preserves from State regulations designed to manipulate predator/prey dynamics for human consumptive use goals.

In deciding not to treat NPS lands differently from State and other lands, the BOG suggested the NPS was responsible for ensuring that taking wildlife complies with federal laws and policies applicable to NPS areas, and that the NPS could use its own authority to ensure national preserves are managed in a manner consistent with federal law and NPS policy. See, e.g., Statement of BOG Chairman Judkins to Superintendent Dudgeon, BOG Public Meeting in Fairbanks, Alaska (February 27, 2010) (NPS was testifying in opposition to allowing the take of black bear cubs and sows with cubs with artificial light in national preserves). In the absence of State action excluding national preserves, this rulemaking is required to make the temporary restrictions permanent. 36 CFR 13.50(d). This rule responds to the BOG's suggestion by promulgating NPS regulations to ensure national preserves are managed consistent with federal law and policy and prevent historically prohibited sport hunting practices from being authorized in national preserves.

The scope of this rule is limited—sport hunting and trapping are still allowed throughout national preserves and the vast majority of State hunting regulations are consistent with federal law and policy and continue to apply in national preserves. This rule only restricts sport hunting and trapping in national preserves, which constitute less than six percent of the lands in Alaska open to hunting. This rule does not limit the taking of wildlife for Title VIII subsistence uses under the federal subsistence regulations.

### **Final Rule.**

#### *Summary of Final Rule.*

The rule separates regulations that govern the taking of fish and the taking of wildlife into two sections: 13.40 and 13.42, respectively. The rule makes the following substantive changes to existing NPS regulations:



(1) In accordance with NPS policies, taking wildlife, hunting or trapping activities, or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans are not allowed on NPS-managed lands. It also explains how the NPS will notify the public of specific activities that are not consistent with this section.

(2) Affirms current State prohibitions on harvest practices by adopting them as federal regulation, and also maintains historical prohibitions on certain practices that the State has recently authorized for sport hunting of predators: (i) taking any black bear, including cubs and sows with cubs, with artificial light at den sites; (ii) taking brown bears over bait; and (iii) taking wolves and coyotes during the denning season. The rule also eliminates exceptions to practices generally prohibited under State of Alaska law, thereby prohibiting: taking caribou that are swimming, or from a motorboat that is under power, in two game management units (GMU); baiting black bears; and using dogs to hunt black bears.

(3) Prohibits intentionally obstructing or hindering persons actively engaged in lawful hunting or trapping.

(4) Updates and simplifies procedures for implementing closures or restrictions in park areas, including taking fish and wildlife for sport purposes.

(5) Updates NPS regulations to reflect federal assumption of the management of subsistence hunting and fishing under Title VIII of ANILCA from the State in the 1990s.

(6) Allows the use of native species as bait, commonly salmon eggs, for fishing in accordance with applicable federal and non-conflicting State law. This supersedes for park areas in Alaska the National Park System-wide prohibition on using certain types of bait in 36 CFR 2.3(d)(2).

### *Prohibiting Predator Reduction.*

Activities or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural ecosystems or processes (including natural predator/prey dynamics, distributions, densities, age-class distributions, populations, genetics, or behavior of a species) are inconsistent with the laws and policies applicable to NPS areas. The rule clarifies in regulation that these activities are not allowed on NPS lands in Alaska. Under this rule, the Regional Director will compile a list updated at least annually of activities prohibited by this section of the rule. Notice will be provided in accordance with 36 CFR 13.50(f) of this rule.

### *Prohibiting Methods and Means of Taking Wildlife in National Preserves.*

The rule codifies for national preserves current State prohibitions on harvest practices, and also maintains historical prohibitions on certain sport hunting practices that have been recently authorized by the State for taking predators. It also eliminates exceptions (as applied to national preserves) under State laws that authorize sport hunters to take swimming caribou, to take caribou from motorboats under power, to take black bears over bait, and to use dogs to hunt black bears. The elements of the rule that are described in this paragraph will not be implemented until January 1, 2016, to avoid any potential confusion that may arise from issuing this rule during the 2015 hunting seasons. Delaying the implementation of these provisions will give the general public and other stakeholders sufficient time to understand the new rules before the 2016 hunting seasons begin.

### *Prohibiting the Obstruction of Persons Engaged in Lawful Hunting or Trapping.*

The rule prohibits the intentional obstruction or hindrance of another person's lawful hunting or trapping activities. This includes (i) placing oneself in a location in which human presence may alter the behavior of the game that another person is attempting to take or alter the

imminent feasibility of taking game by another person; or (ii) creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the game that another person is attempting to take. These actions are prohibited by State law, but this law is not adopted under the regulations for national preserves, because it does not directly regulate hunting and trapping. This rule directly codifies these prohibitions into the NPS regulations, to prevent the frustration of lawful hunting and trapping in national preserves.

*Updating Closure and Restriction Procedures.*

The rule updates and simplifies the procedures for implementing closures and restrictions on certain activities in NPS areas in Alaska. These changes will make the procedures in Alaska more consistent with other NPS units outside of Alaska and with Alaska State Parks. The rule clarifies that Superintendents must use the procedures in § 13.50 to implement any closure or restriction in NPS areas in Alaska. This eliminates potential confusion about whether the procedures in § 13.50 apply only when they are referenced in a separate regulation in part 13 (currently found in the regulations for weapons, camping, and taking fish and wildlife), or whether they apply to all closures and restrictions in Alaska.

The rule requires rulemaking for nonemergency closures or restrictions if the closures or restrictions (or the termination or relaxation of them) are of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area, adversely affect the area's natural, aesthetic, scenic or cultural values, or require a long-term or significant modification in the resource management objectives of the area. These rulemaking criteria are modeled after the the criteria that apply to closures and restrictions in Alaska State Parks (11 AAC 12.335), which are also similar to the criteria in 36 CFR 1.5(b) that apply to NPS areas

outside of Alaska. Emergency closures and restrictions are limited to the duration of the emergency.

Before a nonemergency closure or restriction can be implemented, the NPS must issue a written determination explaining the basis of the closure or restriction. The NPS will also compile in writing a list, updated annually, of all closures and restrictions (i.e., the compendium). The compendium and the written determinations of need will be posted on the NPS website and made available at park headquarters.

With respect to nonemergency restrictions on taking of fish and wildlife in national preserves, the final rule requires an opportunity for public comment, including a public meeting near the affected NPS unit, before the action is taken. This rule recognizes that, although the internet has become an effective method of communicating with the public, in-person public meetings may still be the most effective way to engage Alaskans, particularly those in rural areas. The rule also requires the NPS to consult with the State prior to adopting such closures and restrictions. Emergency closures or restrictions on the taking of fish or wildlife are limited to 60 days and may only be extended after consultation with the State and an opportunity for public comment, including a public meeting, near the affected NPS unit.

The following table summarizes the changes from the proposed rule regarding procedures to implement closures or restrictions in § 13.50:

<b>Proposed rule procedures.</b>	<b>Final rule procedures.</b>
<i>Applicability</i>	
Applies only to closures pertaining to weapons, camping, and taking of fish or wildlife.	Applies to all closures or restrictions except when more specific procedures apply in 36 CFR part 13.
<i>Factors used to determine whether to close an area or restrict an activity</i>	
Includes protecting the integrity of naturally-functioning ecosystems as an appropriate reason	Retains factors in existing regulations at

for a closure or restriction.	13.50.
<i>Written determinations</i>	
Not required.	Requires a written determination explaining the reason for the proposed closure/restriction in nonemergency situations. This determination will be posted on <a href="http://www.nps.gov">www.nps.gov</a> .
<i>Emergency Closures or Restrictions</i>	
May not exceed 60 days.	Duration of the emergency, except for emergency closures or restrictions on taking fish or wildlife, which may not exceed 60 days.
<i>Restrictions on Taking Fish or Wildlife (nonemergency)</i>	
Consultation with the State and opportunity for public comment prior to adopting a closure or restriction.	Consultation with the State and opportunity for public comment, including one or more public meetings near the affected NPS unit, prior to implementing a closure or restriction.
<i>Notice</i>	
Closures or restrictions will be effective upon publication on park website.	Some closures or restrictions will be effective upon publication on park websites, but other closures or restrictions may be posted on a park website prior to taking effect, to give the public adequate time to understand and comply with them. A list of closures and restrictions will be compiled in writing and updated annually, and will be posted on the park websites.

*Update Subsistence Regulations to Reflect Federal Management.*

The rule updates the subsistence provisions in NPS regulations (36 CFR 13.470, 13.480, and 13.490) to reflect the federal government's assumption of the management and regulation of subsistence take of fish and wildlife under ANILCA and the transfer of subsistence management under Title VIII from the State to the Federal Subsistence Board. The rule makes other non-

substantive, editorial changes to the language in 36 CFR 13.490 to streamline, clarify, and better organize this section.

#### *Allowing the Use of Native Species as Bait for Fishing.*

NPS regulations generally prohibit the use of many forms of bait for fishing to help protect against the spread of nonnative species. Fish eggs from native species (usually salmon), are commonly used for fishing in Alaska. This rule allows the use of local native species as bait for fishing.

### **Frequently Asked Questions**

This section explains some of the principal elements of the rule in a question and answer format.

#### *Why is this rule necessary?*

The rule responds to State hunting regulations that authorize wildlife harvest practices that conflict with ANILCA's authorization for sport hunting, the statutory purposes for which national preserves were established, and the NPS Organic Act as implemented by the NPS. These include liberalized predator harvest seasons, bear baiting, and the harvest of caribou while swimming. National park areas are managed for natural ecosystems and processes, including wildlife populations. The NPS legal and policy framework prohibits reducing native predators for the purpose of increasing numbers of harvested species.

As discussed above, the rule also responds to a number of other regulatory needs, by updating and streamlining closure procedures, updating subsistence provisions to reflect the program's actual management, prohibiting interference with lawful hunting consistent with State law, and allowing use of native species as bait for fishing.

#### *Does this rule restrict subsistence harvest of wildlife under Title VIII of ANILCA?*

No.

*Does this rule prohibit all hunting under State regulations on national preserves in Alaska?*

No. This rule restricts certain methods of harvest currently allowed on national preserves by the State of Alaska under its general hunting regulations. These include the taking of any black bear, including cubs and sows with cubs, with artificial light at den sites, taking brown and black bears over bait, taking wolves and coyotes between May 1 and August 9, harvest of swimming caribou or taking caribou from a motorboat while under power, and using dogs to hunt black bears. Additionally, State laws or regulations involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans will not apply in national preserves, pursuant to this rule. These restrictions will affect a very small percentage of hunting practices authorized by State regulation and less than six percent of the lands in Alaska that are open to hunting.

*What regulations apply to hunting and trapping in national preserves?*

Title 36 of the Code of Federal Regulations (CFR) applies to sport hunting and trapping in national preserves. State harvest laws and regulations (Alaska Statute Title 16 and Alaska Administrative Code Title 5 AAC) that are consistent with 36 CFR also apply on national preserves. ANILCA Title VIII subsistence harvest of fish and wildlife by Federally-qualified rural residents is authorized in national preserves in Alaska under 36 CFR part 13 and 50 CFR part 100. Please contact the park chief ranger for additional information or assistance.

*Do I still have to use the State regulations book when hunting on national preserves?*

Yes. State hunting regulations apply to national preserves except when in conflict with federal regulation. Please contact the park chief ranger for additional information or assistance.

*Does this rule restrict intensive management of predators on NPS lands?*

Yes. Consistent with NPS Management Policies 2006, the NPS Organic Act, and the statutory purposes for which national preserves were established, this rule prohibits predator reduction activities on national preserves that have the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans.

*What is the authority for the NPS to restrict hunting and trapping in this rule?*

The NPS Organic Act authorizes the NPS to promulgate regulations that are necessary and proper for the use and management of National Park System units, including national preserves in Alaska, for the purpose of conserving the wild life and providing for the enjoyment of the wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 54 U.S.C. 100101(a) and 100751. ANILCA authorizes the Secretary of the Interior, acting through the NPS, to promulgate regulations prescribing restrictions relating to hunting, fishing, or trapping for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. 16 U.S.C. 3201 and 3202.

*The rule says that State laws or management actions involving predator reduction are not adopted in national preserves. How will I know if a State law involves predator reduction?*

The Regional Director will compile a list updated at least annually of State laws and regulations that are not adopted in national preserves. This list will be posted at [www.nps.gov](http://www.nps.gov) and available upon request at NPS park headquarters.

*I live in a nonrural area and hunt under State subsistence regulations. Does this rule restrict my subsistence harvest practices?*



Title VIII of ANILCA limits subsistence activities to local rural residents. This rule does not restrict federally-qualified subsistence users who are hunting in accordance with federal subsistence regulations. But those persons living in nonrural areas (who therefore are not federally-qualified subsistence users) must comply with the restrictions in this rule. For example, only federally qualified subsistence users hunting under federal subsistence regulations will be able to take swimming caribou within national preserves, for all others this practice will now be prohibited in national preserves.

*How is hunting on national preserves different than hunting on State land?*

Hunting in national preserves is different than on State (or private) lands because NPS regulations also apply and govern in the event of a conflict with State law or regulation. However, harvest opportunities and practices in national preserves vary little from practices allowed under State law, except for some very specific circumstances for which where the NPS has issued regulations. For example, same-day airborne hunting of big game animals, arctic fox, red fox, and lynx has not been allowed on NPS lands since 1995. This rule adds several additional NPS regulations prohibiting the following harvest practices that are allowed under State law: (1) taking any black bear, including cubs and sows with cubs, with artificial light at den sites, (2) taking brown bears and black bears over bait, (3) taking wolves and coyotes from May 1 through August 9, (4) harvest of swimming caribou and harvest of caribou from a moving motorboat by those other than local rural residents in those portions of Noatak, Gates of the Arctic, and Bering Land Bridge Preserves that are within GMUs 23 and 26, and (5) using dogs to hunt black bears.

*Black bear baiting has been allowed for more than three decades. Why is the NPS prohibiting it now?*

The NPS proposed prohibiting the harvest of brown bears over bait to avoid public safety issues, to avoid food-conditioning bears and other species, and to maintain natural bear behavior as required by NPS law and policy. Other land and wildlife management agencies strive to eliminate the feeding of bears through individual and collective educational efforts due to the increased likelihood that food-conditioned bears will be killed by agency personnel or the public in defense of life or property. Food-conditioned bears are also believed more likely to cause human injury. Baiting tends to occur in accessible areas used by multiple user groups, which contributes to the public safety concerns associated with baiting. The concerns presented with taking brown bears over bait also apply to black bear baiting. After reviewing public comment, the final rule prohibits taking both black bears and brown bears over bait in national preserves.

*Why is the NPS prohibiting the take of swimming caribou by individuals who are not federally qualified subsistence users?*

Taking swimming big game is already generally prohibited by State law, but there are exceptions in State law for the take of swimming caribou in GMUs 23 and 26, which include portions of Noatak, Bering Land Bridge, and Gates of the Arctic National Preserves. This method of harvest remains available to federally qualified subsistence users in their pursuit of food. However, as is further explained below, this method is one of those that NPS has found is not consistent with ANILCA's authorization for sport hunting in national preserves.

*Does this rule impact fishing in NPS units in Alaska?*

Yes. This rule allows federally qualified subsistence users to use native species as bait for fishing in accordance with federal subsistence regulations. Others will also be able to use native species for bait when such use is in accordance with non-conflicting State fishing regulations.

*What procedures must the NPS follow to adopt closures and restrictions in NPS units in Alaska?*

The procedures in 36 CFR 13.50 apply to all closures and restrictions in NPS units in Alaska, unless there are more specific procedures stated elsewhere in law or regulation. For example, the following regulations have specific procedures:

- Unattended or abandoned property, 36 CFR 13.45
- Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses, 36 CFR 13.460
- Subsistence use of timber and plant material, 36 CFR 13.485
- Closure to subsistence uses of fish and wildlife, 36 CFR 13.490

*What closures or restrictions will require notice and comment rulemaking that is published in the Federal Register?*

Any nonemergency closure or restriction, or the termination or relaxation of such, which is of a nature, magnitude, and duration that will result in a significant alteration in the public use pattern of the area; adversely affect the area's natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management objectives of the area.

*Doesn't ANILCA require public hearings prior to adopting closures or restrictions?*

Public hearings near the affected vicinity are required before restricting: (1) subsistence harvest of fish or wildlife under Title VIII of ANILCA or (2) access authorized under 16 U.S.C. 3170 (a) of ANILCA. There is no statutory requirement for a public hearing for other types of closures or restrictions.

*Did the NPS eliminate a requirement for public hearings in the affected areas before adopting closures or restrictions relating to the take of fish and wildlife?*

The proposed rule included a requirement to provide an opportunity for public comment on potential restrictions to taking fish or wildlife. Public comment may include written

comments, a public meeting, a public hearing, or a combination thereof. Based upon public comment and to be more consistent with the practices of the BOG and the Federal Subsistence Board, the NPS modified the proposed rule to provide that the opportunity for comment must include at least one public meeting near the affected NPS unit in nonemergency situations. This is a change from the existing regulations, which require a public hearing. Requiring a “meeting” instead of a “hearing” provides more flexibility on how the event is structured. During the public hearings conducted in 2014, the NPS received feedback that some local communities prefer a less formal approach and more opportunities for dialog with NPS managers. The NPS believes the term “meeting” more appropriately describes this type of informational exchange. The NPS also believes the term public meeting is broad enough to include a public hearing if that is more appropriate for the area.

*Where can I find information about closures and restrictions?*

Information about closures and restrictions is posted on each park’s website at [www.nps.gov](http://www.nps.gov). This information is also available upon request at NPS park headquarters.

*Why did the NPS delete the references to State law in the subsistence regulations?*

The NPS deleted the provisions adopting non-conflicting State law because the State no longer manages subsistence harvest under Title VIII of ANILCA. Subsistence harvest of fish and wildlife on federal public lands is generally regulated by the Federal Subsistence Board.

*Is the NPS required to consult with the State prior to adopting closures or restrictions to taking fish or wildlife?*

Yes, except in the case of emergencies.

*Is the NPS required to consult with tribes and ANCSA Native Corporations?*

Yes, the NPS is required to consult with tribes if an NPS action would have a substantial direct effect on federally recognized Indian tribes. Consultation with ANCSA Native Corporations is required if an NPS action would have a substantial direct effect on ANCSA Native Corporation lands, waters, or interests.

*Is the NPS required to consult with affected user groups, such as Regional Advisory Committees, Subsistence Resource Commissions, hunting organizations, or other nongovernmental organizations?*

While this kind of consultation is not required by law, the NPS regards the input from these advisory and other groups as invaluable. The NPS encourages these groups to engage with park managers on topics of interest. The NPS also invites and encourages these committees and groups to provide input on decisions affecting public use of NPS managed lands as outlined in this final rule.

## **Summary of and Responses to Public Comments**

A summary of substantive comments and NPS responses is provided below followed by a table that sets out changes we have made to the proposed rule based on the analysis of the comments and other considerations.

### **Consultation**

*1. Comment:* Some commenters stated the NPS did not adequately consult with the State of Alaska prior to publishing the proposed rule and in doing so, acted inconsistently with ANILCA, the Master Memorandum of Understanding between the NPS and the Alaska Department of Fish and Game (ADF&G), and Executive Order 12866.

*NPS Response:* The NPS respects its responsibility to consult with the State (and others) regarding NPS actions, especially given that wildlife management in NPS units is a responsibility that is shared between the NPS and the State. Publication of the proposed rule

provided an opportunity for consultation between the NPS and the State. The NPS and the ADF&G met shortly after the publication of the proposed rule, which is consistent with ANILCA's consultation requirement. 16 U.S.C. 3201. The NPS has engaged in ongoing communications with the ADF&G, the BOG, the State of Alaska ANILCA Implementation Program, and the State of Alaska Citizen's Advisory Commission on Federal Areas for a number of years regarding the issues that this rule addresses.

Executive Order 12866 requires federal agencies to "seek views of appropriate State, local, and tribal governments before imposing regulatory requirements that might significantly or uniquely affect those governmental entities." Sec. 1(b)(9). As discussed below, the Office of Management and Budget determined this rule is not a significant regulatory action subject to this requirement. Regardless, the NPS invited the views of State, local, and tribal governments before publishing this final rule, and also complied with its responsibilities under section 4 of the Executive Order by including the proposed rule in the Unified Regulatory Agenda that was published by the Office of Management and Budget on [reginfo.gov](http://reginfo.gov).

The NPS signed and implemented the Master Memorandum of Understanding (MMOU) with the ADF&G in 1982. The MMOU states that the ADF&G will manage wildlife on NPS managed lands for natural species diversity and natural process. The NPS agreed to recognize ADF&G as having the primary responsibility to manage wildlife on lands in the State and utilize the State's regulatory process to the maximum extent possible. Both agencies agreed to coordinate planning to minimize conflicts from differing legal mandates and consult with each other when developing regulations. The NPS continues to recognize the State as having primary responsibility to manage fish and wildlife on lands in the State. However, the State's responsibility is not exclusive and it does not preclude federal regulation of wildlife on federal

public lands, as is well-established in the courts and specifically stated in ANILCA. The NPS also attempted to utilize the State regulatory process to notify the BOG when proposals created a conflict with NPS laws, regulations, and policies, years before the publication of the proposed rule. During this time NPS requested that the conflicts be resolved, as a first resort, through the State regulatory process. Only after conflicts could not be resolved through that process, and the BOG suggested the NPS could use its own authority to meet its mandates for managing wildlife, did the NPS consider modifications to federal regulations to resolve the conflicts.

*2. Comment:* Some commenters stated that the NPS did not adequately consult with tribes, various advisory committees, and rural residents prior to publishing the proposed rule.

*NPS Response:* NPS has an obligation to consult with tribes prior to making a decision that would have a substantial direct effect on federally-recognized tribes. Even though the NPS determined that the proposed rule would not have a substantial direct effect on tribes, the NPS initiated consultation shortly after publication of the proposed rule. The NPS emailed a letter to tribes inviting them to consult and notifying them of two statewide conference calls dedicated to tribal consultation in the fall of 2014. No one provided comments or asked questions during the first call. On the second call, four individuals who serve as members of tribal councils provided comments. Park managers also contacted tribes with ties to the park areas by phone, email, and letter to invite them to consult. NPS met in person with three tribes that requested additional consultation. The NPS also provided information to affected Subsistence Resource Commissions and Regional Advisory Councils beginning when the first temporary wildlife harvest restrictions were considered in 2010, and provided periodic updates throughout the process. Since these harvest restrictions were first proposed, the NPS stated its intention to initiate rulemaking and solicited public comment on these provisions. After the proposed rule was published, the NPS

provided 121 days for written comment, met with and provided information to multiple groups, and held an additional 26 public hearings across the State, in rural locations near affected units as well as Anchorage, Fairbanks, Palmer, and Soldotna.

*3. Comment:* Some commenters stated the NPS did not respond to comments and questions from the State of Alaska on the temporary wildlife harvest restrictions that were included in the proposed rule, which might have enabled the State to take action that would make the proposed harvest restrictions unnecessary. Commenters also suggested the NPS work with the State of Alaska collaboratively to address the wildlife harvest issues in this rule.

*NPS Response:* The NPS would have preferred a collaborative approach with a solution in State law or regulation rather than federal regulation. To that end, the NPS has testified before the Board of Game many times, requested the Board of Game take specific regulatory action to address NPS concerns, met with ADF&G, provided explanations for the restrictions in writing, and responded to comments in the annual park compendiums. The NPS acknowledges the State requested scientific data to support the temporary restrictions on taking black bears, including cubs and sows with cubs, with artificial light at den sites, taking brown bears over bait, and prohibiting the take of wolves and coyotes during the summer months. However, neither the temporary restrictions nor this rule are based on particular wildlife population levels, and do not require the preparation of such scientific data. The basis of the compendium provisions, as well as the rule, is the NPS legal and policy framework, which has been communicated verbally and in writing several times.

#### Process for Publishing the Proposed Rule

*4. Comment:* Several comments stated that the NPS should give more weight to comments on the proposed rule from Alaskans than other members of the public. Another comment urged the NPS to increase cooperation and dialogue with rural Alaskans. Others



expressed concern that the NPS is not considering public comments when developing the final rule, and did not adequately respond to public comments delivered at public meetings.

*NPS Response:* The NPS agrees that it will continue to strive to increase cooperation and dialogue with rural Alaskans, many of whom live near the national preserves and may be affected by this rule. After consideration of public comments on the proposed rule, the NPS has included a provision in the final rule requiring it hold one or more public meetings near the affected NPS unit before implementing any non-emergency closure or restriction on the sport take of fish or wildlife in national preserves.

During the comment periods for the proposed rule, the NPS held 26 public hearings in Alaska in an effort to solicit the opinions and comments of Alaskans. The NPS has considered all relevant comments it received on the proposed rule, including those from rural Alaskans and those delivered at public meetings. The NPS considers each comment based upon its substantive content, and does not give greater weight to any comment based upon the residence of the commenter. This is also consistent with the statutory purpose for establishing the national preserves in Alaska for the benefit, use, education, and inspiration of present and future generations of all Americans.

*5. Comment:* Some comments stated that the NPS did not provide the public with sufficient time to review and comment on the proposed rule. Other comments felt that the NPS should not be allowed to make changes to the proposed rule without allowing the public to review and comment on those changes.

*NPS Response:* The policy of the U.S. Department of the Interior is ordinarily to provide at least 60 days for public comment on any proposed rule that is published in the Federal Register. Due to the anticipated interest in this rule, the NPS provided an initial comment period

of 90 days so that the public would have additional time to consider the proposal and submit timely comments. After the initial 90-day comment period expired, the NPS received several requests to reopen the comment period to give the public more time to review and prepare comments. Acknowledging the interest in this rule, the NPS agreed with these requests and reopened the comment period for an additional 31 days. In total, the NPS provided the public with 121 days to review and comment on the proposed rule, and appreciates the thoughtful consideration and responses it received. The NPS believes that the length of the combined public comment period was adequate and does not intend to reopen, for a second time, the public comment period.

After considering public comments and after additional review, the NPS made certain changes to the proposed rule, which are described in the section below entitled “Changes from the Proposed Rule.” The changes are a logical outgrowth of the proposed rule, and were reasonably foreseeable by the public when the proposed rule was published. For example, the NPS specifically requested comment on taking black bears over bait in the proposed rule. This notified the public that the proposed rule could change with respect to this issue after consideration of public comment. Other changes to the proposed rule, such as requiring a public meeting before adopting a closure or restriction for taking wildlife, are consistent with the existing regulations at 36 CFR 13.50.

#### Comments on Guiding Laws and Regulations

6. *Comment:* Some commenters stated that NPS does not have the authority to supersede State wildlife regulations, while others requested the NPS clarify its authority to preempt conflicting State regulations under the Property and Supremacy Clauses of the Constitution.

*NPS Response:* Under the Property and Supremacy Clauses of the U.S. Constitution, State wildlife laws that conflict with NPS’s efforts to carry out its statutory mandate are

preempted. *See, e.g. Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Hunt v. United States*, 278 U.S. 96 (1928); *New Mexico State Game Comm’n v. Udall*, 410 F.2d 1197 (10<sup>th</sup> Cir.), *cert. denied*, *New Mexico State Game Comm’n v. Hickel*, 396 U.S. 961 (1969); *United States v. Brown*, 552 F.2d 817 (8<sup>th</sup> Cir. 1977). Certain State-authorized hunting and trapping practices are not consistent with the NPS implementation of the NPS Organic Act and ANILCA. Consequently, the final rule is an appropriate exercise of the authority affirmed by the cases cited above.

7. *Comment:* Several commenters questioned how any take of wildlife on national preserve lands is permissible when regulations that may “alter the natural predator/prey dynamics, distribution, densities, age-class distributions, populations, genetics or behavior of a species” are interpreted as being incompatible with the laws and policies of the National Park Service.

*NPS Response:* ANILCA provides for harvest of wildlife in national preserves. Therefore some level of take is appropriate and compatible with the NPS legal and policy framework for Alaska national preserves. This rule does not prohibit all State-authorized hunting and trapping. The vast majority of State regulations are, and are expected to remain, compatible with the NPS management framework. Over the past several decades, only a handful of State regulations have been superseded by NPS regulations.

The NPS believes that the standard in the rule is a workable and limited standard that satisfies our legal and policy framework and does not include all actions that result in the harvest of wildlife. This rule provides that the NPS does not adopt State management actions or laws or regulations that authorize taking of wildlife, which are related to predator reduction efforts, meaning that they have the intent or potential to alter or manipulate natural predator-prey

dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans. The NPS acknowledges that the public would benefit from greater clarity as to exactly which State laws and regulations are not adopted by the NPS. As a result, the rule requires the Regional Director to publish at least annually a list of all such laws and regulations not adopted in national preserves.

#### General Comments

8. *Comment:* Some commenters objected to the NPS description that some of the harvest practices, such as taking swimming caribou and hunting caribou from a motorboat while under power, are “longstanding prohibited.”

*NPS Response:* The harvest methods prohibited by this rule stem from general hunting and trapping restrictions in State law and regulation, some of which have been relaxed in recent years in response to proposals to the BOG. Some of these proposals to relax hunting and trapping restrictions were adopted in whole or in part to reduce predators. Three of these proposals removed longstanding prohibitions on harvest methods. In response, the NPS prohibited these methods on a temporary basis: (1) taking any black bear, including cubs and sows with cubs, with artificial light at den sites; (2) taking brown bears over bait; and (3) taking wolves and coyotes during the summer months. This rule makes the temporary restrictions permanent. This rule also prohibits some additional practices that the NPS acknowledges were not historically prohibited. These practices, however, existed only as exceptions to general prohibitions in State law: (1) taking swimming caribou or taking caribou from a motorboat while under power, in GMUs 23 and 26; (2) black bear baiting; and (3) using dogs to hunt black bears. For the reasons explained herein, NPS believes these practices should also now be prohibited in national preserves.

9. *Comment:* Some comments stated that the hunting methods that would be prohibited by the proposed rule were not intended to reduce predators but were allowed by the BOG based on requests from the Alaskans for additional harvest opportunity or to authorize traditional practices. Other comments stated the NPS proposed rule would prefer predators over ungulates. Others supported the proposed rule because it would prohibit harvest practices designed to reduce predators, which is inconsistent with NPS laws.

*NPS Response:* The NPS acknowledges many of the harvest practices recently authorized by the State were based in whole or in part on proposals from Alaskan hunters, some of whom may also be federally-qualified subsistence users. However, the record shows some of these proposals and the decisions to act on them were based wholly or in part on a desire to reduce predator populations, and often far in excess of any previous authorizations. Before the BOG authorized taking cubs and sows with cubs at den sites, it had only allowed this activity as part of a predator control program. (Findings of the Alaska Board of Game 2012-194-BOG, Board of Game Bear Conservation, Harvest, and Management Policy, expiration June 30, 2016 (January 18, 2012)). The State's decision to expand wolf and coyote seasons was based in part on a desire to elevate survival rates of moose and caribou calves.

As explained in the background section of this rule, NPS management policies prohibit the manipulation of wildlife populations, and require the NPS to protect natural abundances, distributions, densities, and populations of wildlife. This rule does not favor predators over ungulates, which would also violate NPS management policies. The rule is primarily focused on the take of predators because the allowances implemented by the State target predators, not ungulates. Even in these circumstances, the rule is consistent with NPS policy to allow for the fluctuation of natural populations of all species in national preserves, by prohibiting the

purposeful decrease of predator populations to achieve (or attempt) an increase of ungulate populations to benefit hunters.

*10. Comment:* One commenter stated the NPS misinterpreted the State sustained yield mandate in the proposed rule and requested the NPS clarify the State's statutory definition to make it clear the State has authority to manage for a variety of beneficial uses of wildlife rather than only to support a high level of human harvest of wildlife.

*NPS Response:* NPS acknowledges that the State may have broader authorities and goals, but in general, interpretation and clarification of State law is a matter for the State. This rule ensures that taking of wildlife in national preserves is consistent with federal laws and NPS policies that require the NPS to manage national preserves for natural processes.

*11. Comment:* Several commenters directly or indirectly commented on State-authorized subsistence harvest of fish and wildlife. Some commenters suggested ANILCA authorizes State subsistence separate from Title VIII subsistence. Some comments stated the proposed rule restricts subsistence uses by Alaska Natives. Some commenters stated that federally qualified subsistence users often prefer to harvest wildlife under State regulations because the State regulations are more liberal than federal subsistence regulations and the Federal Subsistence Board regulatory process is cumbersome and takes too long. Conversely, some subsistence hunters voiced support for the proposed regulations as they do not consider some of the methods prohibited by this rule to be traditional or consistent with natural processes and population dynamics.

*NPS Response:* ANILCA, 16 U.S.C. 3201, states that national preserves shall be managed “in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve[.]” Under

ANILCA and in this rule, the term “subsistence” refers only to subsistence activities authorized by Title VIII of ANILCA, which must comply with the federal subsistence regulations (among other things, they are restricted to rural Alaska residents). ANILCA did not authorize any separate State subsistence activities. Take of wildlife is authorized in national preserves only to the extent it is consistent with either the federal subsistence regulations or with regulations applicable to taking of wildlife for “sport purposes.”

The NPS acknowledges that some rural residents eligible to harvest wildlife under federal subsistence regulations in NPS units also harvest wildlife under State regulations in national preserves, particularly when the State methods, seasons, and bag limits are more liberal. To the extent that this harvest does not conflict with NPS regulations applicable to sport hunting, these opportunities are preserved. Any changes to federal subsistence regulations should be proposed to the Federal Subsistence Board.

*12. Comment:* Some commenters objected to the use of the term “sport hunting” in the proposed rule as offensive and inaccurate in certain cases such as when a federal subsistence user moves out of the area and is no longer eligible to harvest under federal subsistence regulations.

*NPS Response:* The NPS understands that some hunters who harvest wildlife under State regulations are not hunting for recreation or “sport.” Sometimes individuals who are harvesting under State regulations were once rural residents but are no longer federally qualified subsistence users. However, Congress used the term “sport purposes” in ANILCA and it would be inappropriate for the NPS to allow harvest that is neither for “subsistence purposes” nor for “sport purposes” under 16 U.S.C. 3201.

*13. Comment:* Some commenters supported the prohibition on the methods of take in the proposed rule because they are unsporting or unethical; others stated the NPS should not regulate ethics regarding wildlife harvest.

*NPS Response:* Although the term “sport” is not defined in ANILCA, each term in a statute is presumed to have meaning. Sportsmanship in hunting has more than a hundred years of tradition and meaning in the conservation movement in America. See JOHN F. REIGER, *AMERICAN SPORTSMEN AND THE ORIGIN OF CONSERVATION* (Winchester Press 1975). When methods of harvest go beyond traditionally accepted norms of “sport” in hunting, they may fall outside of what Congress intended when it authorized hunting in statutes like ANILCA. In some such cases, NPS believes regulations may be needed to curtail these activities that were never intended to occur in units of the National Park System. Such situations historically have been rare. Except for the prohibition of same-day airborne hunting in 1995, the NPS has not restricted the practices authorized by the State through federal rulemaking published in the CFR. There has, however, been a departure in recent years by the BOG, which has sought to advance the goals of increasing harvested species by targeting predators. In order to comply with federal law and NPS policy, these recent allowances have been prohibited by the NPS in national preserves on a temporary basis through compendium actions, and are now permanently prohibited by this rule.

The NPS also recognizes that some practices that are being prohibited for “sport” hunters may be appropriate for subsistence users. An example of this is taking swimming caribou. On NPS lands, the take of swimming caribou for subsistence is allowed in accordance with federal subsistence regulations, but it is not appropriate as a “sport” hunting practice on waters within national preserves.



*14. Comment:* Some commenters stated the proposed rule would prohibit Alaska residents from participating in State subsistence fisheries.

*NPS Response:* This rule makes no changes to fishing regulations other than allowing the use of native species as bait for fishing. Fishing in NPS units under federal subsistence regulations must be in accordance with 36 CFR 13.470 and 50 CFR part 100. Other noncommercial fishing is authorized under 36 CFR 13.40 and in accordance with the provisions of 36 CFR 2.3. To the extent it is consistent with those regulations, State-authorized subsistence fishing is allowed within NPS units.

*15. Comment:* Some commenters asserted that NPS does not have authority to enact the proposed regulations and that the NPS actions are inconsistent with 16 U.S.C. 3114 and 16 U.S.C. 3125(3) of ANILCA.

*NPS Response:* This final rule is not promulgated under 16 U.S.C. 3114, which provides that subsistence take of fish and wildlife has priority over other uses when it is necessary to restrict the harvest of fish or wildlife to protect the viability of the population or to continue subsistence uses. The restrictions in this rule are not necessary to protect the viability of a population or to continue Title VIII subsistence uses, nor do they affect subsistence uses or priority. The NPS is promulgating this rule under the NPS Organic Act and 16 U.S.C. 3201, which provide NPS with authority to restrict the taking of wildlife for sport purposes in national preserves for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.

Similarly, 16 U.S.C. 3125(3) does not apply to this rule. That provision provides that “[n]othing in this title shall be construed as . . . authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses . . . unless necessary for the conservation of healthy populations

of fish and wildlife ... to continue subsistence uses of such populations [.]” The phrase “this title” refers solely to Title VIII of ANILCA—this section does not apply to 16 U.S.C. 3201, which was enacted as part of Title XIII. This section thus does not preclude the NPS from authorizing restrictions under other titles in ANILCA (such as Title XIII) or other federal laws (such as the NPS Organic Act), as is the case here.

*16. Comment:* Some commenters stated the NPS should limit hunting to traditional harvest methods because current technology could result in overharvest. Commenters also stated that resources should be allocated to most local users when harvest must be reduced.

*NPS Response:* In consultation with the State and the Federal Subsistence Board, the NPS will consider restrictions on specific harvest practices on a case by case basis. In times of shortage ANILCA, 16 U.S.C. 3114, provides priority to local subsistence users over others.

*17. Comment:* Some commenters objected to the statement in the proposed rule that management of wildlife on national preserves must protect natural processes, because ANILCA calls for “healthy” populations, not “natural” populations.

*NPS Response:* Title VIII of ANILCA refers to conserving “healthy” populations of wildlife on federal public lands in Alaska. ANILCA also states that nothing in the statute modifies or repeals any federal law governing the conservation or protection of fish and wildlife. The statute explicitly identifies the NPS Organic Act as one of those federal laws. The NPS Organic Act requires the NPS to conserve the wild life in units of the National Park System (including national preserves) and to provide for visitor enjoyment of the wild life for this and future generations. 54 U.S.C. 100101. Policies implementing the NPS Organic Act require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of

wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2. The legislative history of ANILCA reflects that Congress did not intend to modify the NPS Organic Act in this respect: “the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population’s dynamics, and manipulations of the components of the ecosystem.” Senate Report 96-413, Committee on Energy and Natural Resources at pages 232-233 (hereafter Senate Report 96-413). This is reflected in the statutory purposes of various national preserves that were established by ANILCA, which include the protection of populations of fish and wildlife.

*18. Comment:* Some commenters stated the proposed rule includes ambiguous terms and gives too much discretion to park superintendents.

*NPS Response:* The NPS believes the actions the superintendents are authorized to take in the rule are consistent with federal law and are comparable to the actions superintendents have long been authorized to take in similar circumstances. It also recognizes that superintendents are the subject matter experts regarding management of the park unit and have been delegated responsibility to take action and respond to changing circumstances that may affect the values and resources of a park unit.

*19. Comment:* Some commenters questioned the basis of the proposed rule because the NPS did not cite or provide evidence or data related to wildlife population-level effects or any conservation concern.

*NPS Response:* As discussed above, the rule is based on the NPS legal and policy framework, which among other things “requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem ....” Senate Report 96-413, at page 171. This rule is not based

on particular wildlife population levels, and did not require the preparation of data on those levels. Rather the rule reflects the NPS responsibility to manage national preserves for natural processes, including predator-prey relationships, and responds to practices that are intended to alter those processes.

*20. Comment:* A couple of commenters asked for clarification about the harvest opportunities that would be prohibited by the proposed rule on a unit by unit basis.

*NPS Response:* The NPS believes the rule clearly describes the harvest practices that are prohibited. All but three of these practices are already prohibited by either NPS temporary actions or existing State law. The only currently allowed harvest practices that will be prohibited under this rule are taking caribou that are swimming or taking caribou from a motorboat while under power (currently allowed in portions of Noatak, Gates of the Arctic, and Bering Land Bridge National Preserves), black bear baiting, and using dogs to hunt black bears. The NPS will assist the public to understand the impacts of the rule on sport harvest of wildlife in national preserves. The public and visitors are encouraged to contact or visit the local NPS offices for information or assistance.

*21. Comment:* One commenter opposed the prohibition on the take of muskrats at pushups, adding that this practice has been authorized by the State since 1967 and that the practice is not known to have caused conservation or user problems.

*NPS Response:* The proposed rule would have prohibited the take of muskrats at pushups, which is currently authorized under State regulations. This was not the NPS's intent, and the final rule has been modified to allow for this practice.

22. *Comment:* One commenter stated the allowance in the proposed rule for using electronic calls to take big game (except moose) should be modified to allow electronic calls for all game (except moose).

*NPS Response:* The NPS agrees with the suggestion, which is consistent with State law. The NPS has modified the rule accordingly.

23. *Comment:* Some commenters objected to the practice of trapping and snaring generally due to the potential for user conflicts and safety concerns due to traps and snares on or near trails. Some commenters specifically objected to snaring bears. Some commenters said trapping should not be allowed near trails used by others in order to protect those visitors and their pets. Some commenters said trappers should be required to identify their traps with their name and contact information.

*NPS Response:* ANILCA generally allows for trapping (including snaring) in national preserves. Under this rule and adopted State law, there are restrictions on animals that may be trapped under a trapping license, types of traps, as well as restrictions on locations where traps may be set. Because pets are required to be leashed, traps—even those set near trails—have not been a concern historically. In the event that trapping presents safety concerns, the NPS will address those concerns on a case-by-case basis.

24. *Comment:* Commenters suggested there is an inconsistency between what is being proposed for NPS lands in Alaska and allowances in some Lower 48 parks, including taking coyotes year-round.

*NPS Response:* Units of the National Park System are “united through their interrelated purposes and resources into one National Park System,” and managed in a manner “consistent with and founded in the purpose established by” the NPS Organic Act, “to the common benefit

of all the people of the United States.” 54 U.S.C. 100101. But units also are managed consistent with their enabling statutes and other laws specifically applicable to those units, such as ANILCA. Hunting of any kind is generally prohibited in units of the National Park System, 36 CFR 2.2, except where specifically authorized by statute, as is the case for national preserves in Alaska (as well as subsistence activities in other Alaska units). In those units that do allow hunting, hunting seasons for particular species generally vary from unit to unit and are often set by State law. When NPS sets seasons or other restrictions by regulation, it does so case by case, based on the resource and management needs of the particular unit.

*25. Comment:* Some commenters suggested that the rule should prohibit the more subtle means of affecting the natural functioning ecosystem, such as hunters not being required to obtain tags or permits for predators, same-day airborne hunting and trapping, and sale of raw hides and skulls.

*NPS Response:* Many of the activities described by the commenter are already prohibited under federal regulations. For example, same-day airborne hunting of big game animals, arctic fox, red fox, or lynx is not allowed on NPS lands. Additionally, sale of raw hides and skulls is not allowed under existing NPS regulations. The NPS has not identified a need for NPS-issued tags and permits and consequently has not required harvest permits and tags beyond those required by State regulations and federal subsistence regulations.

*26. Comment:* One commenter said that while ungulates will probably remain the focus of the State’s intensive management program, it is conceivable that another species could become the focus in the future due to fads or economic interests. The commenter suggested that NPS needs the flexibility to include additional species when necessary to provide for naturally functioning ecosystems.

*NPS Response:* While naturally functioning ecosystems include natural diversity and abundances of native wildlife populations, the NPS does not believe it is necessary to modify the proposed rule to address this concern. Should the issue arise in the future, the NPS will work with the State and consider appropriate action at that time.

*27. Comment:* One commenter suggested adding “intercepting” wildlife to the list of prohibited actions that cannot be taken by an aircraft, snowmachine, or other motor vehicle. Also, the term “positioning” is used to refer to the practice of using snowmachines for lining caribou up for a shot. It should be clarified whether this practice is considered “herding.”

*NPS Response:* Paragraph (g)(4) of this rule prohibits using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife. Using an aircraft, snowmachine, or other motor vehicle to “intercept” or “position” wildlife is prohibited by this provision, because the wildlife would be (among other things) harassed, chased, driven, herded, molested, or otherwise disturbed by the use of the aircraft, snowmachine, or motor vehicle. As a result, the NPS does not believe it is necessary to revise the proposed rule to specifically prohibit “intercepting” or “positioning” wildlife as these activities are already covered by the rule.

*28. Comment:* Some commenters stated the NPS should also address bag limits for certain species, such as wolves.

*NPS Response:* The NPS generally believes bag limits are more appropriately addressed through the State regulatory process and Federal Subsistence Program in conjunction with harvest information and population data. Should bag limits become a concern in the future, the NPS will work with the State and the Federal Subsistence Board as appropriate.

29. *Comment:* Some commenters objected to prohibiting the harvest methods identified in the proposed rule as unnecessary since they duplicate State regulations already in effect or would eliminate harvest opportunities for Alaskans.

*NPS Response:* The NPS affirms current State prohibitions on harvest methods by codifying them as federal law. Should exceptions to these State prohibitions be made in the future, the NPS will consider whether to adopt the same exceptions for national preserves. The majority of existing harvest opportunities provided under State law will still be available for hunters in national preserves.

#### Annual List of Harvest Regulations Not Adopted

30. *Comment:* Some commenters objected to the provision in the proposed rule requiring the Regional Director to compile an annual list of State laws and regulations that are not adopted in national preserves because they are aimed at reducing predators. Some comments suggested that the NPS hold public hearings and a public comment period before the Regional Director places laws and regulations on this list. Other commenters stated this provision is inconsistent with ANILCA and would give superintendents too much discretionary authority.

*NPS Response:* The provision requiring the Regional Director to identify State laws and regulations not adopted under paragraph (f) is designed to remove any ambiguity about which State-authorized activities are prohibited on national preserves. The NPS does not believe that a hearing or public comment period is appropriate for the annual list because these activities will be prohibited by paragraph (f)(2) without any further action by the NPS or the Regional Director. The purpose of the list is to inform the public about which laws and regulations are not adopted by the NPS so that there is no confusion about what is allowed in national preserves. The list is expected to change only to the extent the State authorizes new predator reduction activities that otherwise would affect national preserves. The overall goal of this provision is to maintain the



traditional status quo and prevent the introduction of new predator reduction activities in national preserves.

ANILCA allows the Secretary of the Interior (acting through the NPS) to restrict sport hunting and trapping in national preserves after consultation with the State of Alaska, and does not diminish the authority of the Secretary of the Interior over the management of public lands. See the Background section of this final rule for more information about NPS authority to promulgate this rule. The NPS believes that compiling and annually updating a list of the activities prohibited by paragraph (f) is consistent with the statutory authority provided to the NPS for the management of national preserves.

#### Taking Bears Over Bait

*31. Comment:* Some commenters stated that the practice of baiting black bears and brown bears is appropriate because it will not have adverse ecological or public safety effects. Others commented that baiting black bears and brown bears should be prohibited because it may create public safety issues, food-conditioned bears, or impact natural populations or processes.

*NPS Response:* The NPS proposed prohibiting the harvest of brown bears over bait to avoid public safety issues, to avoid food conditioning bears and other species, and to maintain natural bear behavior as required by the NPS legal and policy framework. By design, baiting typically uses human or pet food to alter the natural behavior of bears to predictably attract them to a specific location for harvest. Land and wildlife management agencies strive to eliminate the feeding of bears through individual and collective educational efforts, due to the increased likelihood that food-conditioned bears are killed by agency personnel or the public in defense of life or property. Food-conditioned bears are also believed more likely to cause human injury. To that end, NPS regulations prohibit feeding wildlife and the practice of baiting is at odds with this.

Because the concerns presented by taking brown bears over bait also apply to black bear baiting, the NPS requested public comment on whether taking black bears over bait should be allowed to continue on national preserves. After reviewing public comment, the NPS has decided to prohibit taking black bears over bait in national preserves. This decision is consistent with State regulations applicable to Denali State Park, where taking of wildlife is authorized but taking black bears over bait is prohibited (see 2014-2015 Alaska Hunting Regulations, p. 27 and 78 and 5 AAC 92.044 for game management units where the practice is authorized).

Bait stations tend to be located in accessible areas due to the infrastructure (typically a 55 gallon drum) and quantity (including weight) of bait used to engage in this activity and the frequency with which the stations must be replenished. Because of the accessibility of these areas, they are typically used by multiple user groups, which contributes to the public safety concerns associated with baiting. Although there are State regulations that prohibit bait stations within a certain distance of structures (cabins/residences), roads, and trails, these distances lack biological significance relative to bears, whose home ranges can include tens to hundreds of square miles.

*32. Comment:* Some commenters stated that bear baiting should be allowed in national preserves because it is a historical practice that predates the establishment of national preserves and it a customary practice by many Alaskans. Commenters also stated the practice should be allowed because the amount of take is or would be small.

*NPS Response:* According to information provided by the State of Alaska, harvest of black bears over bait was authorized by State regulations in 1982. The creation of all NPS areas in Alaska preceded this date. Harvest of bears over the remains of legally-harvested animals not required to be salvaged will continue to be lawful provided the remains are not moved. To the

extent the practice of baiting bears is a customary and traditional practice by rural residents, those uses may be authorized for Federally qualified rural residents pursuant to regulations adopted by the Federal Subsistence Board.

The NPS recognizes that the number of bears harvested over bait in national preserves may not be large. However, this provision is not based on how many bears are harvested or whether that harvest would impact bear population levels. It is based on the legal and policy framework that governs national preserves and calls for maintaining natural ecosystems and processes and minimizing safety concerns presented by food-conditioned bears.

*33. Comment:* One commenter recommended the definition of bait exclude legally taken fish and that bait should exclude legally taken wildlife that is not required to be salvaged under federal as well as State law. A comment was received that game that died of natural causes should not be considered bait.

*NPS Response:* The NPS has modified the definition of bait in a manner that excludes native fish, consistent with State law. Upon review, the NPS determined it is not necessary to reference State or federal law regarding salvage requirements in the definition of bait. The result is that parts of legally taken fish or wildlife that are not required to be salvaged are not considered bait if the parts are not moved from the kill site. The rule excludes from the definition of bait game that died of natural causes, if not moved from the location where it was found.

#### Taking Black Bears with Artificial Light at Den Sites

*34. Comment:* Some comments stated that the use of artificial light to aid the harvest of black bears in dens should be allowed to ensure proper species identification, prevent take of cubs or sows with cubs, and facilitate a human shot placement. Others commented that the use of artificial light to aid the harvest of black bears in dens should be prohibited due to effects on ecological processes and populations and the potential for dangerous orphaned cubs.

*NPS Response:* Although artificial light may, in some cases, aid the harvest of black bears in dens by assisting with species identification and shot placement, the NPS does not support authorizing this practice for sport hunting in national preserves. For rural subsistence users, the NPS believes this matter is more appropriately addressed by the Federal Subsistence Board. The final rule maintains the proposed prohibition on using artificial light to take wildlife, subject to certain exceptions.

#### Using Dogs to Hunt Black Bears

35. *Comment:* In response to a question in the proposed rule, some commenters supported the use of unleashed dogs to hunt black bears pursuant to a State permit. Some commenters stated that the use of dogs to hunt black bears has been allowed since 1970 and is not historically illegal. Other commenters opposed the use of dogs to hunt black bears. These comments stated that this activity would increase stress and trauma for the dogs and bears, reduce bear populations in national preserves, disrupt the natural balance of predator-prey dynamics, alter bear feeding patterns, harass other wildlife, transmit diseases to wildlife, interfere with other sport and subsistence hunters, and be dangerous for the dogs and humans in the area (including by driving bears into roadways and onto private property). Several comments stated that dogs used for hunting roam over large portions of the land, often out of the sight and control of their handlers. Some comments stated that this activity is unethical, unsportsmanlike, and does not have a traditional or cultural basis in Alaska. Other comments stated that dogs are often used to “tree” bears, which makes it difficult to determine the sex of the bear and could result in the killing of females with cubs.

*NPS Response:* Commenters are correct that using dogs to hunt black bears is not “historically illegal.” While State of Alaska law generally prohibits taking big game with the aid or use of a dog, there is an exception for using a dog to take black bears pursuant to a non-

transferable permit issued by the ADF&G. The NPS agrees that this practice could have some of the adverse impacts suggested by commenters who oppose the practice. The NPS also believes the use of unleashed dogs to hunt black bears is one of the practices that is inconsistent with the traditional “sport hunting” that is authorized by ANILCA, as discussed above. The rule generally prohibits taking big game with the aid of use of a dog. The proposed rule has been modified to eliminate an exception that would have allowed the use of dogs to harvest black bears under a State permit.

*36. Comment:* Some commenters supported the use of unleashed dogs to hunt “problem animals” and the use of leashed dogs to hunt wounded black bears.

*NPS Response:* There is no allowance in State law to use unleashed dogs to hunt “problem animals.” Current State law allows use of a single, leashed dog in conjunction with tracking and dispatching a wounded big game animal, including black bear. The intent of the leash requirement is to ensure that native wildlife are not pursued, harassed, or killed by unleashed dogs and to prevent any contact between native wildlife and domestic dogs. The State-authorized use of a single, leashed dog in conjunction with tracking and dispatching a wounded big game animal will remain authorized in national preserves. The NPS will take appropriate action to protect the safety of park visitors and other wildlife from problem animals, such as bears.

*37. Comment:* Some commenters supported using sled dogs to travel to and from hunting and trapping areas, in search of game, and to haul out taken game, but not to chase wildlife.

*NPS Response:* Sled dogs are allowed under 16 U.S.C. 3121(b) of ANILCA for subsistence uses and under 16 U.S.C. 3170(a) of ANILCA for other traditional activities, unless prohibited or restricted on a site specific basis. There are currently no prohibitions or restrictions

on this activity in areas where hunting and trapping are authorized. Herding, harassing, hazing, or driving wildlife is prohibited under NPS regulations. This includes “chasing” wildlife.

### Wolves and Coyotes

*38. Comment:* Several commenters supported the limitations on taking wolves and coyotes in the proposed rule, and suggested additional protections such as extending the duration of the no-take period and imposing bag limits. These comments were concerned about hunting pressure, declining populations, and protecting pregnant females to avoid orphaned pups and unsuccessful rearing. Other commenters opposed the limitations on taking wolves and coyotes in the proposed rule, and suggested additional allowances for taking these species, including adoption of the State hunting seasons. Several commenters stated that extended hunting seasons for wolves and coyotes allow for a traditional form of hunting specifically authorized under the State subsistence program, and are not meant to be predator control.

*NPS Response:* The rule prohibits taking wolves and coyotes from May 1 through August 9. These dates reflect previously longstanding State harvest seasons that provided harvest opportunities while maintaining viable wolf and coyote populations. The rule maintains the decades-old management paradigm of State and federal managers, rather than adopting recently liberalized State regulations that lengthen the hunting seasons. Should wolf or coyote population levels become a concern in the future, the NPS will work with the State and consider appropriate action at that time.

*39. Comment:* Some commenters stated that coyotes are not native to Alaska.

*NPS Response:* Coyotes are native to North America, and while coyotes may not have historically occupied all of their current range, their expansion most likely occurred through natural processes. Consequently, the NPS manages coyotes in the same manner as other native species consistent with NPS Management Policies (§§ 4.1, 4.4.1, 4.4.1.2, 4.4.2).

40. *Comment:* A few commenters questioned whether wolf pelts taken during the denning season have limited value.

*NPS Response:* The NPS understands that some individuals may have uses for wolf pelts that are harvested outside the normal trapping season. This rule, however, protects wolves during the denning season when they are vulnerable. The rule preserves the opportunity to harvest wolves when the pelts are thicker for cold winter temperatures. A pelt that has begun to shed out for summer is thinner, may become patchy, and for these reasons is not generally considered as valuable.

#### Swimming Caribou

41. *Comment:* One commenter stated that the proposed prohibition on taking swimming caribou would be difficult to enforce because the harvest opportunities are along the river's edge and animals often fall in the low spots or the water. Another commenter supported the prohibition, noting that there are sufficient opportunities for sport hunters to harvest caribou on land.

*NPS Response:* NPS agrees that there are adequate opportunities for sport hunters to harvest caribou on land. Although there may be a few situations where it is difficult to tell whether a caribou was taken while swimming, the NPS believes that the prohibition will be enforceable. Also, under existing State regulations, this practice is limited to waters in GMUs 23 and 26. Noatak, Gates of the Arctic, and Bering Land Bridge are the only national preserves within these GMUs. To the extent individuals who are not federally qualified subsistence users engage in this activity elsewhere (e.g., Onion Portage within Kobuk Valley National Park), such use is not authorized under existing NPS regulations, which allow only federally qualified subsistence users to hunt within certain national parks and monuments in Alaska.

42. *Comment:* Several commenters opposed the prohibition on the take of swimming caribou, stating that it would prevent those who no longer live in rural Alaska from harvesting foods in a traditional manner. Commenters stated that former residents would not be allowed to return to hunt or to assist elders with hunting in traditional ways. Other commenters supported the proposed prohibition of taking caribou while swimming, noting that it is unsporting and not consistent with fair chase.

*NPS Response:* The NPS recognizes that taking caribou while swimming is a customary and traditional subsistence practice in some areas of the State. The NPS supports continuation of this practice under federal subsistence regulations in NPS units. The NPS also agrees with the comment that the practice of taking caribou while swimming is not consistent with fair chase and thus believes it is not appropriate to allow as a sport hunting practice. Although former local residents who no longer qualify to hunt under federal subsistence regulations will not be able to engage in such subsistence harvests, they may participate in other aspects of the traditional practice.

#### Obstruction of Hunting

43. *Comment:* Some commenters opposed the proposed prohibition on obstructing hunting activities as unnecessary or providing special treatment to hunters. Others questioned the need for the provision because it is already in State law.

*NPS Response:* In the past, the NPS has received reports of individuals actively attempting to obstruct others from hunting. While this conduct is prohibited under State law, it is not currently prohibited under NPS regulations. Consequently, in the event of a violation of this type in a national preserve, only the State could take enforcement action. This rule allows the NPS also to take enforcement action. This protects the lawful rights of hunters in national



preserves, but does not afford them special treatment above what they are currently entitled to by State law.

#### Bait for Fishing

*44. Comment:* Commenters generally supported using native species as bait for fishing. Some commenters suggested the species used should be obtained from the waters being fished to avoid introducing a species that is native to Alaska but not native to a particular watershed.

*NPS Response:* The NPS agrees that bait species should be limited to those native to Alaska, but does not believe that allowing the use of species not native to a particular watershed poses a risk that new species will be introduced into that watershed. Existing State and federal regulations already prohibit the use of live fish for bait in fresh water, and using dead fish or unfertilized eggs removed from a harvested fish will not result in the introduction of new species that are not native to a particular watershed. In marine waters, existing regulations already require that any fish used for bait come from the same waters being fished.

*45. Comment:* One commenter supported allowing bait for fishing but stated the rule is not necessary because State regulations that allow bait apply to NPS units.

*NPS Response:* Section 13.40(b) provides that fishing must be consistent with 36 CFR 2.3. Section 2.3 prohibits the use of live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe as bait for fishing in fresh waters, along with methods other than hook and line. Consequently this rule is necessary to allow the use of native species of fish or fish eggs as bait for fishing.

*46. Comment:* Some commenters supported the intent to allow bait for fishing since it is a common practice and commonly allowed in Alaska, but said it would create confusion on waters where the State has prohibited bait. These commenters also noted the State allows many forms of

bait that would not be considered native species, such as natural or synthetic scents, and natural or processed vegetable matter.

*NPS Response:* NPS regulations adopt non-conflicting State regulations. Under existing NPS regulations, the use of bait is allowed in accordance with State law under 36 CFR 2.3 except for the use of fish, amphibians or their eggs. This rule allows the use of native fish, amphibians, and their eggs as bait if authorized by the State. If the State does not allow the use of these types of bait in waters within NPS areas, State law will govern and the use of native fish, amphibians, and their eggs as bait will not be allowed.

#### Updating Federal Subsistence Regulations

*47. Comment:* Some commenters opposed removal of regulatory language providing for consultation with the State regarding potential closures to subsistence harvest of fish and wildlife. A suggestion was made to retain the provision adopting non-conflicting State laws for subsistence harvest of fish and wildlife. A comment also suggested adding several provisions to the subsistence closure procedures in 36 CFR 13.490, including consultation with various stakeholders, holding public hearings in the affected vicinity, and holding hearings in coordination with other meetings.

*NPS Response:* The existing provision that adopts non-conflicting State laws is not necessary due to the assumption by the Federal Subsistence Board of regulatory authority over Title VIII subsistence harvest of fish and wildlife. Federal subsistence regulations, which apply in NPS units where Title VIII subsistence is allowed, include regulatory language that adopts non-conflicting State laws. The provision in 36 CFR 13.490 is no longer necessary and will be removed by this rule.

Upon review of comments and considering the practices of the Federal Subsistence Board, the NPS agrees with the recommendation to retain the language providing for

consultation with the State prior to the NPS implementing closures to subsistence take of fish and wildlife. Because harvest is regulated by the Federal Subsistence Board, the NPS has modified the proposed rule to also include consultation with the Federal Subsistence Board.

Finally, for consistency with 36 CFR 13.50, which was modified based upon comments (addressed below), the rule has been modified to specify that public hearings will be held near the affected park unit (rather than the “affected vicinity”) prior to implementing the management action in nonemergency situations.

#### Updating Closure and Restriction Procedures

*48. Comment:* Some commenters objected to the changes in 36 CFR 13.50 as inconsistent with ANILCA or not appropriate for Alaska.

*NPS Response:* The changes to 36 CFR 13.50 bring procedures for implementing closures and restrictions more in line with procedures that apply to the entire National Park System under 36 CFR 1.5, as well as procedures used by Alaska State Parks. 11 AAC 12.355. The public will benefit from aligning procedures with other NPS units as well as Alaska State Parks. This consistency will enable the public to more effectively engage managers regarding their uses of the public lands and the resources on them.

While commenters referred generally to the proposed changes as being inconsistent with ANILCA, the only provision cited was 16 U.S.C. 3202. That section contains general savings provisions preserving the Secretary’s authority to manage public lands and preserving the State’s non-conflicting authority to manage fish and wildlife on those lands. Nothing in that section is specifically relevant to the closure and restriction provisions of 36 CFR 13.50; accordingly the NPS finds no conflict between ANILCA and these procedural updates.

*49. Comment:* Some commenters stated the proposed rule would give too much authority to the superintendents to adopt restrictions, specifically on taking of fish or wildlife for sport

purposes. Some commenters stated that closures or restrictions must be based upon demonstrated biological considerations (e.g., wildlife population data).

*NPS Response:* Federal statutes, including ANILCA, provide the NPS with substantial discretion in managing units of the National Park System. Generally, National Park System regulations need only be “necessary or proper for the use and management of System units.” 54 U.S.C. 100751. With respect to sport hunting in national preserves in Alaska, Congress authorized the NPS to restrict these activities for reasons of “public safety, administration, floral and faunal protection, or public use and enjoyment.” 16 U.S.C. 3201. The NPS thus is not required to base its management decisions regarding these restrictions only on biological considerations. The rule maintains the superintendent’s long established authority to make management decisions for NPS units based upon a variety of criteria. The NPS plans to continue to require review of all proposed closures and restrictions at the regional level.

*50. Comment:* Some commenters were concerned that the proposed changes to 36 CFR 13.50 would limit Alaskans’ ability to comment on potential closures and restrictions on NPS-managed areas by shortening the comment period, soliciting comments from non-residents of Alaska, and reducing the number of public meetings.

*NPS Response:* While hearings are required in certain circumstances (e.g., restricting subsistence harvest of fish or wildlife under Title VIII of ANILCA or access authorized under 16 U.S.C. 3170(a)), there is no statutory requirement to take public comment on closures or restrictions that are not required to be published in the Federal Register. The NPS believes, however, that public involvement is an important component of managing NPS units. Alaskans and all Americans have an important say in how these national interest lands are managed. Accordingly, except in emergencies, the rule requires an opportunity for public comment,

including holding at least one public meeting near the affected NPS unit, prior to adopting a closure or restriction related to taking fish or wildlife. The changes to § 13.50 will not limit any existing opportunities, including public meetings, for Alaskan residents to comment on proposed closures and restrictions for NPS units in Alaska. The NPS posts online proposed closures and restrictions for NPS units in Alaska and invites public comment on them. The NPS intends to continue this practice.

*51. Comment:* Some commenters objected to removing the requirement that the NPS hold a hearing before implementing closures or restrictions on taking of fish and wildlife for sport purposes. Some were concerned that the NPS would cease meeting with local communities or that the change would give superintendents too much discretion to decide whether to meet with local communities. Some commenters stated the NPS should not consider the time or expense to the government or anticipated number of attendees in determining whether to hold public hearings.

*NPS Response:* The proposed rule would have replaced the existing regulatory requirement to hold a hearing in the affected vicinity with a requirement to provide an opportunity for public comment, which could include a written comment period, public meeting, public hearing, or a combination thereof. After reviewing comments and considering the similar procedures used by the BOG and the Federal Subsistence Board, the NPS modified the proposed rule to add a requirement to hold one or more public meetings near the affected park unit prior to implementing a closure or restriction on taking fish and wildlife in national preserves, except in the case of emergencies. The NPS will attempt to hold public meetings in conjunction with other events, like Subsistence Resource Commission meetings, when possible. The NPS will consider holding more than one public meeting depending the nature of the action, local interest, and

other opportunities for engagement. The rule will also require the NPS to continue the current practice of providing an opportunity for public comment prior to implementing proposed closures and restrictions related to taking fish and wildlife. The NPS intends to continue its current practice of accepting written comments submitted electronically or by mail or hand delivery. This will give Alaskans and other Americans an opportunity to provide meaningful input on these management actions.

*52. Comment:* Some comments suggested the NPS provide public notice and hold a hearing prior to adopting emergency closures relating to fish and wildlife.

*NPS Response:* Although the NPS supports providing the public with a meaningful opportunity to comment, in certain circumstances action may be necessary to protect wildlife or public safety before there is an opportunity for public comment or a hearing. The NPS will provide appropriate notice of emergency closures and restrictions in accordance with the provisions of 36 CFR 13.50.

*53. Comment:* Some commenters stated the proposed rule would eliminate a requirement to do written determinations stating the basis for closures, restrictions, and other designations.

*NPS Response:* Although the procedures in 36 CFR 1.5(c) require a written determination of need explaining the reasons for closures or restrictions on public use, the current procedures in § 13.50 do not. The NPS however, has provided such determinations for all proposed closures and restrictions in NPS units in Alaska to better inform the public about the reasons for its decisions. This comment highlights the complexity regarding the various procedural regulations that currently apply to NPS units in Alaska. The NPS believes it is in the public's interest to streamline procedures as much as possible in order to make them more consistent. This will make it easier for the public to be involved in NPS decision-making in Alaska. Accordingly, the

NPS has decided to apply the procedures of 36 CFR 13.50, as revised in this rule, to all closures and restrictions in NPS units in Alaska unless a more specific regulation in part 13 provides otherwise (i.e., 36 CFR 13.490 pertaining to closures to subsistence harvest of fish and wildlife). These revised procedures that apply to all NPS units in Alaska require a written determination explaining the basis of the restriction.

*54. Comment:* Some commenters objected to utilizing web-based tools for information sharing and taking public comment since not all Alaskans have reliable internet. Other commenters objected to using the internet because it is easier for individuals outside Alaska to provide input. Some commenters interpreted the proposed rule to imply that the NPS will engage the public using social media exclusively.

*NPS Response:* The NPS acknowledges that some individuals, especially in rural Alaska, may not have reliable internet access or may prefer other methods of communicating with the NPS. The methods of providing notice in the rule are consistent with NPS practices in place in Alaska for more than a decade. The primary method of notifying the public of closures or restrictions has been posting notice online and disseminating press releases by email. It has been the practice for the NPS to invite public comment through electronic means as well as by mail or hand delivery. The majority of public comments are received electronically. The NPS will continue to accept written comments through electronic and traditional means (mail or hand delivery). The NPS will also use other notification procedures such as posting in local post offices and other public places when practical. Individuals may also request copies of the park compendium and other NPS documents by mail or in person. Social media is a valuable tool to inform as well as engage a certain segment of the public, but it is not, and will not be, the only way the NPS engages and communicates with the public. The NPS believes that using the

internet will make it easier for some segments of the American public, regardless of residency, to provide input on proposed management actions for NPS units in Alaska. This is appropriate because National Park System units are federal lands that are protected and preserved for all Americans.

*55. Comment:* Some commenters suggested that the proposed rule should provide opening procedures.

*NPS Response:* The procedures in the rule apply to the termination and relaxation of closures and restrictions, which includes actions that open areas and allow activities that had been closed or restricted.

*56. Comment:* Some commenters suggested retaining the distinction between permanent and temporary restrictions. These commenters recommend temporary restrictions be limited to 12 months and rulemaking be required for all permanent restrictions or those restrictions in place longer than 12 months. Other comments stated the existing 30-day limitation on emergency closures should be retained with no extensions.

*NPS Response:* The categories distinguishing permanent and temporary closures or restrictions have been problematic and difficult to implement, as noted by the State and others during the annual compendium review process on several occasions. Under current regulations, closures or restrictions in place for more than 12 months must be implemented by rulemaking and cannot be extended, regardless of significance or public interest. The result of this structure is that the NPS must repropose and reissue temporary closures or restrictions each year, even in circumstances where there is little public interest in the action, or where the action is an insignificant management decision. The existing framework is overly rigid and complicated, and unnecessarily compromises the NPS's ability to protect resources and provide for public use and



enjoyment. The NPS has determined that the criteria-based rulemaking structure that exists in the nationwide NPS regulations (and is mirrored by Alaska State Parks) provides a better framework. A criteria-based framework requires notice and comment rulemaking based on the impact the closure or restriction will have on the values, resources, and visitors of the park unit. This framework allows the superintendent to implement closures or restrictions that do not significantly impact values, resources, or visitor use without needing to publish a rule in the Federal Register or propose the same action again every year. For example, a prohibition on smoking near fuel storage tanks would not necessarily require a rulemaking, but closing an area to all sport harvest on a permanent basis would. The criteria-based framework allows managers to be more flexible and adapt to changing circumstances. The improved consistency with other NPS units and Alaska State Parks will also make it easier for the public to be involved in decision-making regarding the use of public lands in Alaska.

With regard to the duration of emergency closures, the NPS rule is more consistent with the practice of other agencies and NPS regulations that apply outside of Alaska. The existing regulations limit emergency closures to 30 days without extension. Federal subsistence regulations regarding subsistence harvest of fish and wildlife provide for emergency closures of up to 60 days and allow for extensions. National Park System-wide regulations and Alaska State Parks regulations do not provide a time limit on emergency closures. 36 CFR 1.5, 11 AAC 12.355. With respect to restrictions on taking fish and wildlife for sport purposes in national preserves, the NPS adopts the 60-day timeframe and allows for extensions—after consultation with the State and public comment (including a public meeting)—if the emergency persists. The NPS believes the public will benefit from this consistency with respect to emergency closures or restrictions on taking of fish or wildlife. Other emergency actions will have no explicit expiration

date and may exist until the emergency is resolved. This is consistent with regulations for NPS units located outside of Alaska and for Alaska State Parks.

*57. Comment:* Some commenters stated the NPS should retain the provision requiring consultation with the State and with “representatives of affected user groups” prior to adopting restrictions on the take of wildlife for sport purposes, including Subsistence Resource Commissions, federal subsistence regional advisory councils, local fish and game advisory committees, tribes, and others. Some commenters also stated the NPS must implement the recommendations of Subsistence Resources Commissions unless the criteria of 16 U.S.C. 3118(b) apply.

*NPS Response:* 16 U.S.C. 3201 requires the NPS to consult with the State prior to prescribing restrictions relating to hunting, fishing, or trapping in national preserves. The rule does not eliminate that statutory requirement; it has moved this requirement into § 13.50 because it relates to closures and restrictions. The rule also requires the NPS to provide an opportunity for public comment, including one or more public meetings near the affected national preserve prior to implementing a closure or restriction on taking fish or wildlife. This will provide representatives of affected user groups an opportunity to provide comments to the NPS prior to the action being implemented. User groups are invited and encouraged to provide input on all such proposed actions.

The NPS agrees that input from advisory groups, NPS Subsistence Resource Commissions, and others is important and valuable and the NPS encourages these groups to engage with the park superintendents on topics of interest. The NPS, however, does not agree that the provisions of 16 U.S.C. 3118(b) apply as broadly as suggested. Under 16 U.S.C. 3118, Subsistence Resource Commissions are established for areas designated as national parks and

monuments (not national preserves) to provide subsistence hunting program recommendations. ANILCA further provides that a subsistence hunting program recommendation for national parks and monuments must be implemented unless it “violates recognized principles of wildlife conservation, threatens the conservation of healthy population of wildlife . . . is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents.” While Subsistence Resource Commissions provide valuable input on multiple topics that affect national parks, monuments, and national preserves, the Subsistence Resource Commission’s statutory charge is specific to Title VIII subsistence hunting program recommendations in national parks and monuments. This rule does not restrict Title VIII subsistence and applies only to sport harvest on national preserves. Therefore 16 U.S.C. 3118(b) does not apply.

*58. Comment:* Some commenters stated that the factors in the rule that must be considered by superintendents prior to adopting a closure or restriction are ambiguous and give too much discretion to park superintendents. Other commenters suggested adding factors, including “natural,” “natural and healthy,” “healthy,” and “species of concern,” to those in the proposed rule. Other commenters suggested retaining the reference to emergencies.

*NPS Response:* The factors that must be considered by superintendents place appropriate guidelines around their authority to manage NPS units in Alaska. The discretionary authority granted to superintendents recognizes that they are subject matter experts regarding management of the park unit and allows them to take action and respond to changing circumstances in the unit.

Under the existing regulations, the superintendent must consider factors including public health and safety, resource protection, protection of cultural or scientific values, subsistence uses,

conservation of endangered or threatened species, and other management considerations in determining whether to adopt closures or restrictions on an emergency basis. These factors appear elsewhere in 36 CFR part 13 (e.g., 36 CFR 13.460(b) and 13.485(c)). The NPS proposed to modify this section by requiring the superintendent to consider these factors for all closures and restrictions (not just emergencies), and adding the criteria of “naturally functioning ecosystems” based on *NPS Management Policies 2006*, which implement the NPS Organic Act.

In the final rule, the NPS has decided that adding a requirement that the superintendent consider protecting “naturally functioning ecosystems” is unnecessary because this consideration is encompassed by the existing requirement that the superintendent consider “resource protection.” The NPS considered adding the terms “natural,” “natural and healthy,” “healthy,” and “species of concern,” but determined such terms are not necessary because they are a part of “resource protection” or in some cases “conservation of endangered or threatened species.”

### **Changes from the Proposed Rule**

After taking the public comments into consideration and after additional review, the NPS made the following substantive changes in the final rule:

§13.1	Added an exception to the definition of “bait” for legally taken fish not required to be salvaged if not moved from the kill site. This change is consistent with State law and would exclude this practice from the prohibition on using bait in the rule. The term “game” was changed to “wildlife” for consistency with NPS terminology.
§13.42(g)	Delayed implementation of the prohibited methods of taking wildlife until January 1, 2016.
§13.42(g)(8)	Added an allowance for using electronic calls to take all game animals (not limited to big game animals) except for moose.
§13.42(g)(10)	Removed an exception that would have allowed the taking black bears over bait, which is now prohibited.
§13.42(g)(11)	Removed an exception that would have allowed the use of dogs to take

	black bears under a State permit.
§13.42(g)(14)	Added an exception to the prohibition on taking a fur animal by disturbing or destroying a den to allow taking muskrats at pushups or feeding houses.
§13.42(e)	Modified an existing requirement that individuals transporting wildlife through park areas must identify themselves and the location where the wildlife was taken to any NPS personnel. This information must now only be given to NPS law enforcement personnel. This type of information is relevant for law enforcement purposes and accordingly, the identification requirement should be limited to law enforcement officers.
§13.50(a)	Modified to reflect the applicability of § 13.50 to all NPS closures and restrictions in Alaska unless more specific procedures in part 13 apply.
§13.50(b)	Changed the title from “criteria” to “factors” because the regulatory text refers to the considerations as “factors.” Removed “protecting the integrity of naturally functioning ecosystems” as factor that must be considered by the superintendent in determining whether to close an area or restrict an activity.
§13.50(c)	Change the title from “duration” to “rulemaking requirements” to accurately reflect the content of the subsection. Removed the provision limiting all emergency closures and restrictions to 60 days.
§13.50(d)	Added a provision requiring written explanation of the reasons for implementing, relaxing, or terminating a closure or restriction, except in emergencies.
§13.50(e)	Prior to implementing nonemergency closures or restrictions on taking fish or wildlife, added a requirement to hold one or more public meetings near the affected NPS unit. Added a 60-day time limit for emergency closures or restrictions on taking fish or wildlife with extensions only upon consultation with the State and public comment, including a meeting near the affected NPS unit.
§13.50(f)	Closures or restrictions will be “posted on the NPS website” rather than “effective upon publication on the NPS website.” This change reflects that the NPS may post closures or restrictions on the NPS website prior to them taking effect. Also added a requirement to compile a written list, updated annually, of closures and restrictions which is posted on the NPS website.
§13.50	Removed existing regulations on “Openings” and “Facility closures and restrictions” because they are redundant with the revisions to this

	section.
§13.50(g)	Shortened for clarity and brevity.
§13.490	Added a requirement to consult with the State and the Federal Subsistence Board before temporary restrictions on taking fish or wildlife for subsistence uses under Title VIII of ANILCA. Updated the language regarding location of hearings to near the “affected NPS unit” for consistency with the changes in § 13.50.

## **Compliance With Other Laws, Executive Orders, and Department Policy.**

### **Regulatory Planning and Review (Executive Order 12866).**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### **Regulatory Flexibility Act.**

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled “Cost-Benefit and

Regulatory Flexibility Analyses: Proposed Revisions to Wildlife Harvest Regulations in National Park System Alaska Region” which can be viewed online at <http://parkplanning.nps.gov/akro>, by clicking the link entitled “Amend Hunting and Trapping Regulations in National Preserves In Alaska” and then clicking the link entitled “Document List.”

**Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act.**

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (Executive Order 12630).**

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

**Federalism (Executive Order 13132).**

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule's effect is limited to federal lands managed by the NPS in Alaska and it will not have a substantial direct effect on state and local government in Alaska. A Federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988).**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation with Indian Tribes (E.O. 13175 and Department policy) and ANCSA Native Corporations.**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation and Alaska Native Claims Settlement Act (ANCSA) Native Corporation policies and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. While the NPS has determined the rule will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources, the NPS consulted with Alaska Native tribes and Alaska Native Corporations on the proposed rule, as discussed above.



**Paperwork Reduction Act (44 U.S.C. 3501 et seq.).**

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act.**

The NPS has analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and 516 DM. We prepared an environmental assessment entitled “Wildlife Harvest On National Park System Preserves In Alaska” (EA) to determine whether this rule will have a significant impact on the quality of the human environment. This rule does not constitute a major Federal action significantly affecting the quality of the human environment, and an environmental impact statement is not required, because we reached a Finding of No Significant Impact (FONSI). The EA and FONSI are available online at <http://www.parkplanning.nps.gov/akro>, by clicking on the link entitled “Amend Hunting and Trapping Regulations in National Preserves In Alaska” and then clicking on the link entitled “Document List.”

**Effects on the Energy Supply (Executive Order 13211).**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**Drafting Information.**

The primary authors of this regulation are Jay Calhoun, Regulations Program Specialist, National Park Service, Division of Jurisdiction, Regulations, and Special Park Uses; Philip Hooge, Denali National Park and Preserve; Barbara Cellarius, Wrangell-St. Elias National Park

and Preserve; and Guy Adema, Debora Cooper, Joel Hard, Grant Hilderbrand, Brooke Merrell, Bud Rice, and Andee Sears of the Alaska Regional Office, National Park Service.

### **List of Subjects in 36 CFR Part 13**

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as set forth below:

### **PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240.

2. In § 13.1, add in alphabetical order the terms “Bait”, “Big game”, “Cub bear”, “Fur animal”, “Furbearer”, and “Trapping” to read as follows:

#### **§ 13.1 Definitions.**

\* \* \* \* \*

*Bait* means, for purposes of taking wildlife other than fish, any material used to attract wildlife by sense of smell or taste except:

(1) Parts of legally taken wildlife or fish that are not required to be salvaged if the parts are not moved from the kill site; or

(2) Wildlife or fish that died of natural causes, if not moved from the location where it was found.

*Big game* means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, muskox, Dall’s sheep, wolf, and wolverine.

\* \* \* \* \*

*Cub bear* means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

\* \* \* \* \*

*Fur animal* means a classification of animals subject to taking with a hunting license, consisting of beaver, coyote, arctic fox, red fox, lynx, flying squirrel, ground squirrel, or red squirrel that have not been domestically raised.

*Furbearer* means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf and wolverine.

\* \* \* \* \*

*Trapping* means taking furbearers under a trapping license.

\* \* \* \* \*

3. In § 13.40, revise the section heading and paragraphs (d) and (e) to read as follows:

**§ 13.40 Taking of fish.**

\* \* \* \* \*

(d) *Use of native species as bait.* Use of species native to Alaska as bait for fishing is allowed in accordance with non-conflicting State law and regulations.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish in accordance with the provisions of § 13.50.

4. Add § 13.42 to read as follows:

**§ 13.42 Taking of wildlife in national preserves.**

(a) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulation.

(b) Violating a provision of either Federal or non-conflicting State law or regulation is prohibited.

(c) Engaging in trapping activities as the employee of another person is prohibited.

(d) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine until after 3 a.m. on the day following the day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(e) Persons transporting wildlife through park areas must identify themselves and the location where the wildlife was taken when requested by NPS law enforcement personnel.

(f) State of Alaska management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts. Predator reduction efforts are those with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans.

(1) The Regional Director will compile a list updated at least annually of State laws and regulations not adopted under this paragraph (f).

(2) Taking of wildlife, hunting or trapping activities, or management actions identified in this paragraph (f) are prohibited. Notice of activities prohibited under this paragraph (f)(2) will be provided in accordance with § 13.50(f).

(g) This paragraph applies to the taking of wildlife in park areas administered as national preserves except for subsistence uses by local rural residents pursuant to applicable Federal law and regulation. As of January 1, 2016, the following are prohibited:

Prohibited acts.	Any exceptions?
(1) Shooting from, on, or across a park road or highway.	None.
(2) Using any poison or other substance that kills or temporarily incapacitates wildlife.	None.
(3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine.	If the motor has been completely shut off and progress from the motor's power has ceased.
(4) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife.	None.
(5) Taking big game while the animal is swimming.	None.
(6) Using a machine gun, a set gun, or a shotgun larger than 10 gauge.	None.
(7) Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches.	Killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate.
(8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light; laser sights; electronically enhanced night vision scope; any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera, video, or other sensing device; radio or satellite communication; cellular or satellite telephone; or motion detector.	(i) Rangefinders may be used. (ii) Electronic calls may be used for game animals except moose. (iii) Artificial light may be used for the purpose of taking furbearers under a trapping license during an open season from Nov. 1 through March 31 where authorized by the State. (iv) Artificial light may be used by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal. (v) Electronic devices approved in

	writing by the Regional Director.
(9) Using snares, nets, or traps to take any species of bear or ungulate.	None.
(10) Using bait.	Using bait to trap furbearers.
(11) Taking big game with the aid or use of a dog.	Leashed dog for tracking wounded big game.
(12) Taking wolves and coyotes from May 1 through August 9.	None.
(13) Taking cub bears or female bears with cubs.	None.
(14) Taking a fur animal or furbearer by disturbing or destroying a den.	Muskrat pushups or feeding houses.

(h) The Superintendent may prohibit or restrict the non-subsistence taking of wildlife in accordance with the provisions of § 13.50.

(i) A person may not intentionally obstruct or hinder another person's lawful hunting or trapping by:

(1) Placing oneself in a location in which human presence may alter the behavior of the game that another person is attempting to take or the imminent feasibility of taking game by another person; or

(2) Creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the game that another person is attempting to take.

5. Revise § 13.50 to read as follows:

**§ 13.50 Closure and restriction procedures.**

(a) *Applicability and authority.* The Superintendent will follow the provisions of this section to close an area or restrict an activity, or terminate or relax a closure or restriction, in NPS areas in Alaska.

(b) *Factors.* In determining whether to close an area or restrict an activity, or whether to terminate or relax a closure or restriction, the Superintendent must ensure that the activity or area

is managed in a manner compatible with the purposes for which the park area was established. The Superintendent's decision under this paragraph must therefore be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, conservation of endangered or threatened species, and other management considerations.

(c) *Rulemaking requirements.* This paragraph applies only to a closure or restriction, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area; adversely affect the area's natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management objectives of the area. Except in emergency situations, the closure or restriction, or the termination or relaxation of such, must be published as a rulemaking in the Federal Register.

(d) *Written determination.* Except in emergency situations, prior to implementing or terminating a closure or restriction, the superintendent shall prepare a written determination justifying the action. That determination shall set forth the reasons the closure or restriction authorized by paragraph (a) of this section has been established. This determination will be posted on the NPS website at [www.nps.gov](http://www.nps.gov).

(e) *Restrictions on taking fish or wildlife.* (1) Except in emergencies, the NPS will consult with the State agency having responsibility over fishing, hunting, or trapping and provide an opportunity for public comment, including one or more public meetings near the affected NPS unit, prior to implementing a closure or restriction on taking fish or wildlife.

(2) Emergency closures or restrictions may not exceed a period of 60 days and may not be extended without following the nonemergency procedures of this section.

(f) *Notice*. A list of closures and restrictions will be compiled in writing and updated annually. The list will be posted on the NPS website at [www.nps.gov](http://www.nps.gov) and made available at park headquarters. Additional means of notice reasonably likely to inform residents in the affected vicinity will also be provided where available, such as:

- (1) Publication in a newspaper of general circulation in the State or in local newspapers;
  - (2) Use of electronic media, such as the internet and email lists;
  - (3) Radio broadcast; or
  - (4) Posting of signs in the local vicinity.
- (g) Violating a closure or restriction is prohibited.

**§ 13.400 [Amended]**

- 6. In § 13.400, remove paragraph (e) and redesignate paragraph (f) as new paragraph (e).
- 7. Revise § 13.470 to read as follows:

**§ 13.470 Subsistence fishing.**

Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable Federal law and regulation, including the provisions of §§ 2.3 and 13.40 of this chapter. Local rural residents in park areas where subsistence uses are allowed may fish with a net, seine, trap, or spear; or use native species as bait, where permitted by applicable Federal law and regulation.

- 8. Revise § 13.480 to read as follows:

**§ 13.480 Subsistence hunting and trapping.**

Local rural residents may hunt and trap wildlife for subsistence uses in park areas where subsistence uses are allowed in compliance with this chapter and 50 CFR part 100.

- 9. In §13.490, revise paragraph (a) to read as follows:



**§ 13.490 Closures and restrictions to subsistence uses of fish and wildlife.**

(a) The Superintendent may temporarily restrict a subsistence activity or close all or part of a park area to subsistence uses of a fish or wildlife population after consultation with the State and the Federal Subsistence Board in accordance with the provisions of this section. The Superintendent may make a temporary closure or restriction notwithstanding any other provision of this part, and only if the following conditions are met:

(1) The restriction or closure must be necessary for reasons of public safety, administration, or to ensure the continued viability of the fish or wildlife population;

(2) Except in emergencies, the Superintendent must provide public notice and hold a public hearing near the affected NPS unit;

(3) The restriction or closure may last only so long as reasonably necessary to achieve the purposes of the closure.

\* \* \* \* \*

Dated: September 9, 2015

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Michael Bean  
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks  
[FR Doc. 2015-26813 Filed: 10/22/2015 08:45 am; Publication Date: 10/23/2015]